

LOGGED PROP ORDER

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9 RICK AUGUSTINI

FILED
2012 NOV 16 PM 2:26
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
BY dy

10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA—SOUTHERN DIVISION

12 KAZENERCOM TOO, et al.,

13 Plaintiffs,

14 v.

15 TURAN PETROLEUM, INC., et al.,

16 Defendants.
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Case No. 8:09-cv-00059-JVS-MLG

NOTICE OF MOTION AND MOTION: (1)
FOR ORDER LEVYING/RELEASING
PORTION OF INTERPLEADED FUNDS TO
SATISFY JUDGMENT/LIEN; OR IN THE
ALTERNATIVE, (2) FOR ORDER
GRANTING LIEN ON ANY CAUSE OF
ACTION, RIGHT TO RELIEF OR
JUDGMENT THAT TURAN PETROLEUM
MAY HAVE; MEMORANDUM OF
POINTS AND AUTHORITIES,
DECLARATIONS OF RICK AUGUSTINI
AND ANATOLY VANETIK AND
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT THEREOF

Date: December 17, 2012

Time: 1:30 p.m.

Courtroom: 10C

MOTION FOR ORDER LEVYING/RELEASING PORTION OF INTERPLEADED FUNDS TO SATISFY
JUDGMENT/LIEN

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Judgment Creditor/Lien Claimant RICK AUGUSTINI
3 (“Judgment Creditor”) will and hereby does move the Court for: (1) an order releasing the sum
4 of \$203,452.10 (plus interest of \$54.85 per day from December 17, 2012 until paid) from the
5 \$1,499,942.42 that Wells Fargo Bank, N.A. paid into court on April 1, 2009 (the “Interpleaded
6 Funds”) to satisfy Judgment Creditor’s judgment/lien; or in the alternative; (2) an order granting
7 Judgment Creditor an express lien with respect to any “cause of action, right to relief or
8 judgment” that TURAN PETROLEUM, INC. (“Turan”) may have vis-à-vis the Interpleaded
9 Funds.

10 The hearing will take place at 1:30 p.m. on December 17, 2012 in Courtroom 10C of
11 the above-referenced court located at 411 West Fourth Street, Room 1053, Santa Ana, CA
12 92701-4516.

13 The application will be based on this notice of motion and motion, the attached
14 memorandum of points and authorities, supporting declaration(s) and request(s) for judicial
15 notice, the file in this matter and any oral argument or other evidence that the Court permits.

16 Pursuant to Local Rule 7-3, Judgment Creditor met and conferred with opposing
17 counsel from November 14-16, 2012. Turan advised Judgment Creditor that it supports this
18 motion. Judgment Creditor was unable to determine whether Third Party Claimants YERKIN
19 BEKTAYEV, KANET MERIMANOV, YERKIN AKKUZOV, SABIRGAN DUSHALIEV
20 and IGOR MAXIMOV intend to oppose this motion. *See Declaration of Rick Augustini, ¶¶ 4-*
21 *11.*

22 Dated: November 16, 2012

LAW OFFICE OF RICK AUGUSTINI

23 s/Rick Augustini

24 By:

25 Rick Augustini
26 Attorneys for Judgment Creditor/Lien Claimant
27 RICK AUGUSTINI
28

Memorandum Of Points And Authorities

**I.
SUMMARY OF ARGUMENT**

By this motion, Judgment Creditor/Lien Claimant RICK AUGUSTINI ("Judgment Creditor") seeks to levy a portion of the \$1,499,942.42 that Wells Fargo Bank, N.A. ("Wells Fargo") paid into court on April 1, 2009 (the "Interpleaded Funds").

As the Court knows, Judgment Creditor used to represent TURAN PETROLEUM, INC. ("Turan").

When Turan failed and refused to pay Judgment Creditor despite repeated assurances, he withdrew as Turan's attorney in this action, filed suit against Turan in Orange County Superior Court, obtained a judgment and filed a notice of lien.

Where, as here, it is *undisputed* that *Turan* owns the Interpleaded Funds, and the underlying dispute concerns *control of Turan's board* as opposed to *ownership* of the Interpleaded Funds, the Counterclaim in Interpleader that Wells Fargo filed is not a true interpleader action.

To the contrary, the Court invited Wells Fargo to pay the Interpleaded Funds into court in after Wells Fargo received competing demands from *two different boards* that it release the Interpleaded Funds to them *for the benefit of Turan*.

It therefore follows that none of Third Party Claimants YERKIN BEKTAYEV, KANET MERIMANOV, YERKIN AKKUZOV, SABIRGAN DUSHALIEV and IGOR MAXIMOV (the "Bektayev Parties") has an *ownership* interest in (or any other right to take) the Interpleaded Funds as a matter of law.

It also is undisputed that: (1) Judgment Creditor is the *only* creditor who has obtained judgment against Turan; and (2) Turan is liable to Judgment Creditor no matter which slate of directors the Court decides is entitled to control its board since he was *defending* Turan against lawsuits filed by third parties, including the California Department of Corporations, which filed two separate actions against it wherein it demanded *over \$10 million* in damages and tried to freeze *all* of its assets.

1 For these reasons, among others, Judgment Creditor is not required to wait until after the
2 trial on the Counterclaim in Interpleader to levy on the Interpleaded Funds, and he is entitled to an
3 order releasing the sum of \$203,452.10 (plus interest of \$54.85 per day from and after December
4 17, 2012) to pay his judgment.

5 In the alternative, Judgment Creditor is entitled to an order granting him an express lien
6 with respect to any "cause of action, right to relief or judgment" that Turan may have vis-à-vis the
7 Interpleaded Funds pursuant to California Rule of Court 3.1360 and/or California Code of Civil
8 Procedure section 708.470.

9 **II.**
10 **JUDGMENT CREDITOR IS ENTITLED TO AN ORDER RELEASING THE SUM OF**
11 **\$203,452.10 FROM THE INTERPLEADED FUNDS**

12 The general rule under California law is "first in time, first in right" with respect to
13 judgment liens. *Cal. Civ. Code* § 2897 ("Other things being equal, different liens upon the same
14 property have priority according to the time of their creation...")

15 Judgment creditors also have the right to lien pending actions under California law:

16 (a) A judgment creditor who has a money judgment against a
17 judgment debtor who is a party to a pending action...may obtain a lien under this
18 article, to the extent required to satisfy the judgment creditor's money judgment,
19 on both of the following:

20 (1) Any cause of action of such judgment debtor for money or
21 property that is the subject of the action...

22 (2) The rights of such judgment debtor to money or property
23 under any judgment subsequently procured in the action or proceeding.

24 (b) To obtain a lien under this article, the judgment creditor shall file a
25 notice of lien and an abstract or certified copy of the judgment creditor's money
26 judgment in the pending action...

27 *Cal. Civ. Proc. Code* §§ 708.410 (a)-(b).

28 Where, as here, it is *undisputed* that the Interpleaded Funds belong to *Turan* as opposed to
any of the Third Party Claimants, i.e., the funds consist of monies deposited into *Turan's* bank
account *before* Third Party Claimants caused Wells Fargo to freeze *Turan's* accounts, Judgment

1 Creditor is entitled to levy on Turan's right to the Interpleaded Funds. *Cal. Civ. Proc. Code* §§
2 708.410 (a)(2); Declaration of Anatoly Vanetik, ¶ 2.

3 Nor can any of Third Party Claimants prevent Judgment Creditor from levying the
4 Interpleaded Funds based on the fact that Wells Fargo filed a Counterclaim in Interpleader.

5 First, as Judgment Creditor noted above, is *undisputed* that the Interpleaded Funds belong
6 to *Turan*, which means that none of the Bektayev Parties has any *ownership* interest in (or any
7 other right to take) the Interpleaded Funds as a matter of law. Vanetik Dec., ¶ 2.

8 To the contrary, the Bektayev Parties repeatedly have claimed that the funds belong to
9 *Turan*. The fact that the Bektayev Parties claim to *control Turan's board* is irrelevant. The funds
10 belong to *Turan*.

11 For example, when the Bektayev Parties demanded that Wells Fargo freeze Turan's bank
12 accounts, they did so *on behalf of Turan* in a letter signed by Kanet Merimanov *in his capacity as*
13 *an alleged director of Turan* on *Turan* letterhead:

14 *We request that Wells Fargo urgently put a freeze on [Turan's] accounts*
15 *at your bank...or any other accounts in the Corporation's name, until the*
16 *receivership is instituted and confirmed by the court."*

17 Vanetik Dec., ¶ 3 and Ex. 3 (Emphasis Added).

18 What is more, it was this letter that caused Wells Fargo to file its Counterclaim in
19 Interpleader and pay the Interpleaded Funds into court:

20 ...[O]n March 2, 2009, Wells Fargo received a facsimile transmission
21 labeled 'urgent' from Kanet Merimanov... The letter, *written on Turan letterhead*,
22 demands that Wells Fargo freeze three accounts pending receivership and is
23 *signed by Mr. Merimanov as the director of Turan*. [¶]...Accordingly, *two*
24 *factions, each purporting to act for Turan*, have made demand on Wells Fargo
25 with regard to the [Interpleaded Funds]... [¶] The evidence...makes it clear that
26 *there are competing factions, each vying for control of Turan in some manner*.
27 Whether the claim of one party is valid and the competing claim is without merit
28 is not for Wells Fargo to decide.

Request for Judicial Notice, Ex. 4 at 2-5 (Emphasis Added).

Third, *Turan* is liable for the fees and costs that *Turan* agreed to pay Judgment Creditor no
matter which faction the Court decides is entitled to control Turan's board since he was *defending*

1 Turan against lawsuits filed by third parties, including the California Department of Corporations,
2 which filed suit separate actions against it, demanded *over \$10 million* in damages and tried to
3 freeze *all* of its assets. Declaration of Rick Augustini, ¶ 1. *Turan* therefore benefitted directly
4 from Judgment Creditor's work.

5 Fourth, any reliance on the Ninth Circuit's decision in *Texaco, Inc. v. Ponsoldt*, 118 F.3d
6 1367 (9th Cir. 1997) is misplaced because, among other things, its facts are distinguishable from
7 those in this case.

8 In *Texaco*, the defendant settled two cases with the plaintiff for \$500,000.00. *Texaco*, 118
9 F.3d at 1367.

10 The defendant had several *judgment creditors* at the time of the settlement, and the District
11 Court recommended that the plaintiff commence an interpleader and pay the settlement proceeds
12 into court after *competing judgment creditors* claimed they were entitled thereto. *Id.*

13 A judgment creditor who obtained a judgment *after* the interpleader action was filed, Imar
14 Arabians, thereafter claimed that its notice of lien gave him priority over earlier liens because he
15 was the first one to serve a notice of lien in the interpleader action. *Id.* at 1368-1369.

16 One of the earlier judgment creditors, Jerry Vanier, disagreed, and Mr. Vanier filed a
17 summary judgment motion, which the District Court granted based on its conclusion that Mr.
18 Vanier was first in time even though Mr. Arabians had filed his notice of lien in the interpleader
19 action first. *Id.* at 1369.

20 The Ninth Circuit affirmed, holding that: (1) judgment creditors could not obtain priority
21 over earlier creditors because they filed notices of lien in the interpleader action first; and (2) there
22 was no conflict between the general rules governing federal interpleader actions and the California
23 rule of first in time, first in right. *Id.* at 1369-1370.

24 Unlike *Texaco*, this is not a "priority" case, or even a true interpleader case.

25 To the contrary, it is *undisputed* in this case that: (1) *Turan* owns the Interpleaded Funds;
26 and (2) Judgment Creditor is the only creditor of *Turan's* who has obtained a judgment and/or
27 recorded a lien; (3) none parties to the Counterclaim in Interpleader *other than Turan* has a claim
28 to the Interpleaded Funds; and (4) *Turan* benefitted directly from Judgment Creditor's work.

1 Where, as here, the time to appeal the judgment has passed, the only thing that will happen
2 if the Court does not release the funds is that the amount of the judgment (and Turan's liability to
3 Judgment Creditor) will increase by 10%, or roughly \$20,000.00, per year.

4 Judgment Creditor therefore is entitled to an order releasing the sum of \$203,452.10 from
5 the Interpleaded Funds to pay his judgment, plus interest of \$54.85 per day from and after
6 December 17, 2012. Augustini Dec., ¶ 3 and Ex. 2.

7 **III.**

8 **IN THE ALTERNATIVE, JUDGMENT CREDITOR IS ENTITLED TO AN ORDER**
9 **GRANTING HIM A LIEN ON ANY CAUSE OF ACTION, RIGHT TO RELIEF OR**
10 **JUDGMENT THAT TURAN MAY HAVE VIS-À-VIS THE INTERPLEADER**

11 California Code of Civil Procedure section 708.470(a) provides:

12 If the judgment debtor is entitled to money or property under the judgment
13 in the action or special proceeding and a lien created under this article exists, upon
14 application of any party to the action or special proceeding, the court may order that
15 the judgment debtor's rights to money or property under the judgment be applied to
16 the satisfaction of the lien created under this article as ordered by the court.
Application for an order under this section shall be on noticed motion. The notice of
motion shall be served on all other parties. Service shall be made personally or by
mail.

17 California Rule of Court 3.1360 provides: "A motion that a lien be granted on a cause of
18 action, right to relief, or judgment must be accompanied by an authenticated record of the
19 judgment on which the judgment creditor relies and a declaration as to the identity of the party
20 involved and the amount due."

21 Judgment Creditor is entitled to relief under California Code of Civil Procedure section
22 708.470(a) by virtue of his judgment, and he has satisfied the requirements of California Rule of
23 Court 3.1360. Augustini Dec., ¶¶ 2-3 and Ex. 2-3.

24 Where, as here, this action involves an interpleader, Judgment Creditor wants to make
25 sure that he is protected going forward.

26 In the event the Court decides not to let Judgment Creditor levy any of the Interpleaded
27 Funds, Judgment Creditor therefore requests that it issue an order granting him an express lien
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1 with respect to any "cause of action, right to relief or judgment" that Turan may have vis-à-vis the
2 Interpleaded Funds.

3 **IV.**
4 **CONCLUSION**

5 For the foregoing reasons, Judgment Creditor respectfully requests that the Court grant
6 this motion in its entirety.

7 Dated: November 16, 2012

LAW OFFICE OF RICK AUGUSTINI

8 s/Rick Augustini

9 By: _____

Rick Augustini

Attorneys for Judgment Creditor/Lien Claimant

10 RICK AUGUSTINI
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Declaration Of Rick Augustini

I, Rick Augustini, declare:

1. I am an attorney licensed to practice in this Court. I used to represent TURAN PETROLEUM, INC. ("Turan") in various matters, including defending it in actions commenced by third parties, including the California Department of Corporations, which filed two separate actions against Turan wherein it demanded *over \$10 million* in damages and unsuccessfully tried to freeze *all* of its assets. I have personal knowledge of the following facts and could testify thereto if called upon to do so.

2. Turan failed and refused to pay me despite repeated assurances, so I filed suit in Orange County Superior Court, obtained a judgment for \$218,926.24, withdrew as Turan's attorney in this action and filed a notice of lien. A true and correct copy of my notice of lien (which includes a certified copy of my judgment) is attached as Exhibit 1.

3. Through the date of the hearing on this motion, i.e., December 17, 2012, the amount due and owing on my judgment will be \$203,452.10, which sum reflects interest at the legal rate of 10% per annum under California law (based on a 365 day year) from and after entry of judgment, less all payments and/or credits. A true and correct copy of the accounting that I prepared is attached as Exhibit 2.

4. From November 14-16, 2012, I attempted to meet and confer pursuant to Local Rule 7-3.

5. I spoke with counsel for Turan, John Hamilton, on Wednesday, November 14, 2012. Turan subsequently indicated that it supports this motion.

6. I thereafter tried to meet and confer with counsel for Third Party Claimants YERKIN BEKTAYEV, KANET MERIMANOV, YERKIN AKKUZOV, SABIRGAN DUSHALIEV and IGOR MAXIMOV ("Third Party Claimants"), John Schreiber.

7. I tried to call Mr. Schreiber on the morning of November 14, 2012, but none of the phone numbers I could find for him (including those on the Court's docket and his website) worked, so I sent Mr. Schreiber an e-mail that provided:

1 I tried to contact you several times by phone today, but the number listed
2 your state bar profile and your website are not working. I'm going to be filing a
3 motion for (1) an order releasing the sum of \$203,452.10 (plus interest from and
4 after the date of the hearing until paid) from the \$1,499,942.42 that Wells Fargo
5 paid into court on April 1, 2009 (the "Interpleaded Funds") to satisfy my
6 judgment/lien; or in the alternative; (2) an order granting me an express lien with
7 respect to any "cause of action, right to relief or judgment" that Turan may have
8 vis-à-vis the Interpleaded Funds. I already have discussed the motion with counsel
9 for Turan. Please contact me to discuss the motion today or tomorrow at the latest
10 so we can discuss the motion pursuant to Local Rule 7-3. Thanks.

11 8. Roughly a day and a half later, at approximately 5:30 p.m. on Thursday,
12 November 15, 2012, I received two e-mails from Mr. Schreiber asking whether I had written fee
13 agreements. I responded at 8:09 a.m. on Friday, November 16, 2012: "Yes. I have written fee
14 agreements that comply with the rules. The superior court would not have entered judgment
15 without them. Please call me ASAP to discuss the motion so I can file/serve it today. Thanks."

16 9. When I still had not heard from Mr. Schreiber by 11:30 a.m. on Friday, November
17 16, 2012, I tried to call him again, but his phone still was not working. I therefore sent Mr.
18 Schreiber another e-mail at 11:34 a.m. and provided Mr. Schreiber with my cell phone number in
19 case he tried to call me over the lunch hour:

20 I tried to call you again a few minutes ago, but your phone is still not
21 working. I don't know what the problem is, but I need to speak with you
22 regarding my motion as soon as possible. Either your clients oppose paying me
23 from the funds previously paid into court or they do not. The next available
24 hearing date is open. I have completed the motion (including interest calculations)
25 based on that hearing date, and I don't want to have to change all the numbers
26 around. I also have to file the motion manually (as opposed to electronically) and
27 serve it by mail given my status as a judgment creditor/lien claimant. That means
28 I need to file/serve today, and I'd rather not get stuck in Friday afternoon traffic.
Please call me by 1:00 p.m. so I don't have to file the motion with a revised
declaration. If you miss me at the office, you always can reach me on my cell:
(949) 291-6173. Thanks in advance for your professional courtesy.

10. When I returned from lunch on Friday, November 16, 2012 at approximately 1:15
p.m., I still had not heard from Mr. Schreiber. I therefore filed this motion before speaking with
him since: (a) December 17, 2011 was an available hearing date on the Court's calendar; (b) the
Court will be dark on the next two hearing dates, i.e., December 24 and 31, 2012; (c) I am

1 scheduled to start a trial on the next hearing date, i.e., January 7, 2012; and (d) I already had
2 prepared the motion (including interest calculations) based on a December 17, 2012 hearing date.

3 11. I therefore do not know as of the time I signed this declaration whether the Third
4 Party Claimants intend to oppose this motion.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct. Executed on November 16, 2012 at Newport Beach, California.

7
8 s/Rick Augustini

9
10 Rick Augustini

Declaration Of Anatoly Vanetik

I, Anatoly Vanetik, declare:

1. I am a party to this action. I also have been an officer and/or director of TURAN PETROLEUM, INC. ("Turan") at the relevant times. I have personal knowledge of the following facts and could testify thereto if called upon to do so.

2. All of \$1,499,942.42 that Wells Fargo Bank, N.A. ("Wells Fargo") paid into court on or about April 1, 2009 belonged to *Turan* (the "Interpleaded Funds"). The Interpleaded Funds consisted of monies that *Turan* deposited in its bank account *before* Third Party Claimants YERKIN BEKTAYEV, KANET MERIMANOV, YERKIN AKKUZOV, SABIRGAN DUSHALIEV and IGOR MAXIMOV (the "Bektayev Parties") demanded that Wells Fargo freeze Turan's accounts. None of the Interpleaded Funds belonged to any of the Bektayev Parties.

3. Attached as Exhibit 3 is a true and correct copy of the letter that the Bektayev Parties transmitted to Wells Fargo that caused it to freeze Turan's accounts.

4. The board of directors of Turan supports this motion, and it asks that the Court grant it so that, among other things: (a) Judgment Creditor is paid for the work he performed; and (b) and it stops incurring additional post-judgment interest on Judgment Creditor's judgment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 14, 2012 at Newport Beach, California.

s/Anatoly Vanetik

Anatoly Vanetik

Request for Judicial Notice

Pursuant to Federal Rule of Evidence 201 and the Federal Rules of Evidence, Judgment Creditor hereby requests that the Court take judicial notice of the following document(s) previously filed in this action:

1. The Memorandum of Points and Authorities that Wells Fargo Bank, N.A. filed on April 3, 2009 as Docket No. 151-2, a true and correct copy of which is attached as Exhibit 4.

2. The Answer and Counter-Claim in Interpleader that Wells Fargo Bank, N.A. filed on April 3, 2009 as Docket No. 167, a true and correct copy of which is attached as Exhibit 5.

Dated: November 16, 2012

LAW OFFICE OF RICK AUGUSTINI

s/Rick Augustini

By: _____

Rick Augustini

Attorneys for Judgment Creditor/Lien Claimant

RICK AUGUSTINI

EXHIBIT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Rick Augustini (Bar No. 160934) (949) 721-6624 620 Newport Center Drive, Suite 1100 Newport Beach, CA 92660		TELEPHONE NO.: (949) 721-6624	FOR COURT USE ONLY BY _____ 2012 AUG 21 PM 2:35 CLERK OF COURT CLERK OF COURT CLERK OF COURT
ATTORNEY FOR LIEN CLAIMANT: Rick Augustini			
NAME OF COURT: United States District Court-Central STREET ADDRESS: District of California MAILING ADDRESS: District of California CITY AND ZIP CODE: 411 West Fourth Street BRANCH NAME: Santa Ana, CA 92701-4516			
PLAINTIFF: Kazenercom Too, et al. DEFENDANT: Turan Petroleum, Inc., et al.			
NOTICE OF LIEN (Attachment—Enforcement of Judgment)			CASE NUMBER: 8:09-cv-00059-JVS-MLG

ALL PARTIES IN THIS ACTION ARE NOTIFIED THAT

1. A lien is created by this notice under
 - a. ☐ Article 3 (commencing with section 491.410) of Chapter 11 of Title 6.5 of Part 2 of the Code of Civil Procedure.
 - b. ☒ Article 5 (commencing with section 708.410) of Chapter 6 of Title 9 of Part 2 of the Code of Civil Procedure.
2. The lien is based on a
 - a. ☐ right to attach order and an order permitting the creation of a lien (copies attached).
 - b. ☒ money judgment.
3. The right to attach order or the money judgment is entered in the following action:
 - a. Title of court (specify): **Orange County Superior**
 - b. Name of case (specify): **Augustini v. Turan Petroleum, Inc., et al.**
 - c. Number of case (specify): **30-2012-00541903**
 - d. ☒ Date of entry of judgment (specify): **July 20, 2012**
 - e. ☐ Dates of renewal of judgment (specify):
4. The name and address of the judgment creditor or person who obtained the right to attach order are (specify):
Rick Augustini, 620 Newport Center Dr., Ste. 1100, Newport Beach, CA 92660
5. The name and last known address of the judgment debtor or person whose property is subject to the right to attach order are (specify):
Turan Petroleum, Inc., 2575 McCabe Way, Suite 100, Irvine, CA 92614
6. The amount required to satisfy the judgment creditor's money judgment or to secure the amount to be secured by the attachment at the time this notice of lien is filed is
\$ 234,556.49 plus post-judgment interest from July 20, 2012.
7. The lien created by this notice attaches to any cause of action of the person named in item 5 that is the subject of this action or proceeding and to that person's rights to money or property under any judgment subsequently procured in this action or proceeding.
8. No compromise, dismissal, settlement, or satisfaction of this action or proceeding or any of the rights of the person named in item 5 to money or property under any judgment procured in this action or proceeding may be entered into by or on behalf of that person, and that person may not enforce any rights to money or property under any judgment procured in this action or proceeding by a writ or otherwise, unless one of the following requirements is satisfied:
 - a. the prior approval by order of the court in this action or proceeding has been obtained;
 - b. the written consent of the person named in item 4 has been obtained or that person has released the lien; or
 - c. the money judgment of the person named in item 4 has been satisfied.

NOTICE The person named in item 5 may claim an exemption for all or any portion of the money or property within 30 days after receiving notice of the creation of the lien. The exemption is waived if it is not claimed in time.

Date: **August 20, 2012**

Rick Augustini

(TYPE OR PRINT NAME)

(SIGNATURE OF LIEN CLAIMANT OR ATTORNEY)

CV-40 (12/03)
 (AT-160, E-165 (New January 1, 1985))

NOTICE OF LIEN
 (Attachment—Enforcement of Judgment)

CCP 491.410, 708.410
 Page 1 of 1

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
06/22/2012 at 03:10:45 PM
Clerk of the Superior Court
By Latasha M. Stalworth, Deputy Clerk

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) Rick Augustini (Bar No. 160934) 620 Newport Center Drive, Suite 1100 Newport Beach, CA 92660 TELEPHONE NO. (949) 721-6624 FAX NO. (Optional) (949) 721-6623 E-MAIL ADDRESS (Optional) ATTORNEY FOR (Name) Plaintiff Rick Augustini		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER JUL 20 2012 ALAN CARLSON, Clerk of the Court <i>Alan Carlson</i> BY S. FRANKS (6)
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center		
PLAINTIFF: Rick Augustini		
DEFENDANT: Turan Petroleum, Inc., et al.		
JUDGMENT <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER 30-2012-00541903

JUDGMENT

1. ☒ **BY DEFAULT**
 - a. Defendant was properly served with a copy of the summons and complaint.
 - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - c. Defendant's default was entered by the clerk upon plaintiff's application.
 - d. ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - e. ☒ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
 - (1) ☐ plaintiff's testimony and other evidence.
 - (2) ☒ plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ **ON STIPULATION**
 - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - b. ☐ the signed written stipulation was filed in the case.
 - c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.
3. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
 - a. The case was tried on (date and time):
before (name of judicial officer):
 - b. Appearances by:

<input type="checkbox"/> Plaintiff (name each):	<input type="checkbox"/> Plaintiff's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
<input type="checkbox"/> Defendant (name each):	<input type="checkbox"/> Defendant's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
 - c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

Page 1 of 2

PLAINTIFF: Rick Augustini	CASE NUMBER: 30-2012-00541903
DEFENDANT: Turan Petroleum, Inc., et al.	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

4. ☐ Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a. ☒ for plaintiff (name each):

Rick Augustini

and against defendant (names):

Turan Petroleum, Inc., a Nevada Corporation

☐ Continued on Attachment 5a.

b. ☐ for defendant (name each):

c. ☐ for cross-complainant (name each):

and against cross-defendant (name each):

☐ Continued on Attachment 5c.

d. ☐ for cross-defendant (name each):

6. Amount.

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Damages	\$ 218,926.24
(2) <input checked="" type="checkbox"/> Prejudgment interest at the annual rate of %	\$ 15,215.35
(3) <input type="checkbox"/> Attorney fees	\$ 0.00
(4) <input checked="" type="checkbox"/> Costs	\$ 414.90
(5) <input type="checkbox"/> Other (specify):	\$ 0.00
(6) TOTAL	\$ 234,556.49

c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input type="checkbox"/> Damages	\$
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input type="checkbox"/> Costs	\$
(5) <input type="checkbox"/> Other (specify):	\$
(6) TOTAL	\$

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.

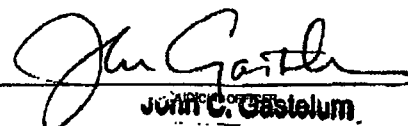
☐ Defendant named in item 5b to recover costs \$
☐ and attorney fees \$

d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.

☐ Cross-defendant named in item 5d to recover costs \$
☐ and attorney fees \$

7. ☐ Other (specify):

Date: 7-20-12

☐ 
JOHN C. GASTELUM

Date: ☐ Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

I hereby certify the foregoing instrument consisting of 2 page(s)
is a true and correct copy of the original on file in this court.



AUG 08 2012

ATTEST (DATE):

ALAN CARLSON EXECUTIVE OFFICER AND CLERK OF THE
SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE

BY Patricia M. Conde DEPUTY

Patricia M. Conde

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 620 Newport Center Drive, Suite 1100, Newport Beach, CA 92660.

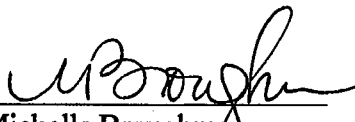
On August 21, 2012, I served the foregoing document(s) NOTICE OF LIEN by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

John M. Hamilton, Esq. JOHN M. HAMILTON LAW OFFICES 5757 West Century Boulevard, Suite 700 Los Angeles, CA 90045	Paul A. Hoffman, Esq. GREENWALD & HOFFMAN 1851 E First Street, Suite 860 Santa Ana, CA 92705-4039
John T. Schreiber, Esq. LAW OFFICES OF JOHN T SCHREIBER 1255 Treat Boulevard, Suite 300 Walnut Creek, CA 94597	Leonard J. Suchanek, Esq. LEONARD J SUCHANEK & ASSOCIATES 1025 Connecticut Avenue Suite 1000 NW Washington, DC 20036
Sylvia M. Scott, Esq. Russell R. Fisk, Esq. FREEMAN FREEMAN AND SMILEY LLP 3415 Sepulveda Boulevard, PH-Suite 1200 Los Angeles, CA 90034-6060	Richard A. Solomon, Esq. Stephen M. Spinella, Esq. SOLOMON GRINDLE SILVERMAN & SPINELLA 12651 High Bluff Drive, Suite 300 San Diego, CA 92130
Alex Striganov 80 Gingerwood Irvine, CA 92603	

I mailed such envelope(s) by depositing them in the United States mail at Newport Beach, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 21, 2012 at Newport Beach, California.


Michelle Broughman

LAW OFFICE OF RICK AUGUSTINI
620 NEWPORT CENTER DRIVE, SUITE 1100
NEWPORT BEACH, CALIFORNIA 92660

Hasler

08/21/2012

FIRST-CLASS MAIL

US POSTAGE

\$00.65⁰



ZIP 92660
011D11609242

John T. Schreiber, Esq.
LAW OFFICES OF JOHN T SCHREIBER
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Walnut Creek, CA 94597

LAW OFFICE OF RICK AUGUSTINI
620 NEWPORT CENTER DRIVE, SUITE 1100
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Sylvia M. Scott, Esq.
Russell R. Fisk, Esq.
FREEMAN FREEMAN AND SMILEY LLP
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Los Angeles, CA 90034-6060

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Stephen M. Spinella, Esq.
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12651 High Bluff Drive, Suite 300
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NEWPORT BEACH, CALIFORNIA 92660

Hasler

08/21/2012

US POSTAGE

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\$00.65⁰



ZIP 92660
011D11609242

Leonard J. Suchanek, Esq.
LEONARD J SUCHANEK & ASSOCIATES
1025 Connecticut Avenue Suite 1000 NW
Washington, DC 20036

EXHIBIT 2

Accounting

Balance as of date of entry of judgment, i.e., July 20, 2012	234556.49
Post-Judgment Interest At The Legal Rate of 10% Per Annum On \$234,556.49 From July 20, 2012 to September 28, 2012 (70 Days @ \$64.26/day) ¹	4498.20
Balance as of September 28, 2012	239054.69
Payment/Credit	(5635.42)
New Balance as of September 28, 2012	233419.27
Post-Judgment Interest At The Legal Rate of 10% Per Annum On \$233,419.27 From September 28, 2012 to October 12, 2012 (14 Days @ \$63.95/day) ²	895.30
Balance as of October 12, 2012	\$234314.57
Payment/Credit	(25000.00)
New Balance as of October 12, 2012	209314.57
Post-Judgment Interest At The Legal Rate of 10% Per Annum On \$209,314.57 From October 12, 2012 to October 19, 2012 (7 Days @ \$57.34/day) ³	401.38
Balance as of October 19, 2012	200715.95
Payment/Credit	(500.00)
New Balance as of October 19, 2012	200215.95
Late/Finance Charge On Past Due Balance of \$200,215.95 From October 19, 2012 to December 17, 2012 (59 Days @ \$54.85/day) ⁴	3236.15
Balance as of December 17, 2012	203452.10

¹ Calculated as follows: $\$234,556.49 * .10 = \$23,455.64 / 365 = \$64.26$.

² Calculated as follows: $\$233,419.27 * .10 = \$23,341.92 / 365 = \$63.95$.

³ Calculated as follows: $\$209,314.57 * .10 = \$20,931.45 / 365 = \$57.34$.

⁴ Calculated as follows: $\$200,215.95 * .10 = \$20,021.59 / 365 = \$54.85$.



Turan Petroleum Inc.
Exploring New Frontiers

Wells Fargo Bank
Legal Department, Management
420 Montgomery St.
San Francisco, CA 94163

cc.: Wells Fargo Branch
Senior Manager
Harbor Boulevard,
2970 Harbor Blvd
Costa Mesa, CA 92626
By fax (714) 979 7832
By FedEx

Dear Madam/Sir:

URGENT

**Re.: Accounts in the name Turan Petroleum, Inc.,
Accounts ## 313-8162700, 265-3846101, 573-8215283,
Request to freeze three accounts pending receivership**

We are submitting to you the Resolutions of the Special Meeting of the Stockholders of Turan Petroleum, Inc. (the "Corporation"), a Nevada corporation, held on February 19th, and the Decisions of its newly elected Board of Directors.

As there had not been a shareholders' meeting held since 2005, which is a direct and serious breach of Nevada law, the new Board has replaced all prior individuals who held themselves out as the Corporation's directors and officers, as those particular individuals, Messieurs Askar Karabayev and Robin Bisarya, have not been appointed by a Board duly elected, at any time, by the shareholders.

The Stockholders elected five individuals as new Directors of the Corporation: Yerkin Akkuzov, Yerkin Bektayev, Sabirgan Dushaliev, Igor Maximov and Kanet Merimanov (myself).

c/o: Gowling Lafleur Henderson, Suite 2600, 160 Elgin St.,
Ottawa, ON, K1P 1C3, Canada, Attn: Michael Boehm, Esq.,
tel. No.: +7-701-720-3737; fax: +7-727-254-39-44, e-mail: turanpetroleum.office@gmail.com

1

P.2/4

To: 186639293936

549 724 1729

SEP-06-2005 03:30 FROM: WELLS FARGO

The attached Resolutions passed by the shareholders, and the subsequent Decisions passed by the Board, relied on the allegations of fraud, conversion, Ponzi schemes, and money laundering contained in several complaints brought against the former directors and officers. These admissions, derived from legal actions brought by these previous directors suing each other, have established that the former alleged officers of Turan Petroleum Inc. have seriously and continuously compromised the interests of all of Turan's shareholders. These Resolutions and Decisions are published on the Internet,

The Resolutions and Decisions authorized the institution of a receivership and restitution of the contributions of the Stockholders.

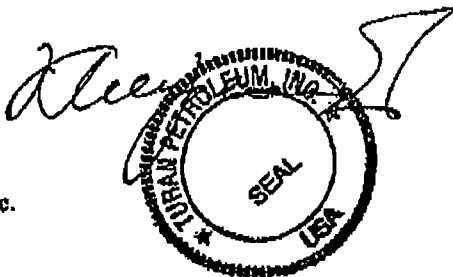
We request that Wells Fargo urgently put a freeze on the above noted 3 accounts at your bank (containing, on information and belief, about \$4 million) or any other accounts in the Corporation's name, until the receivership is instituted and confirmed by the court. Given the facts that the former operators in the name of the Corporation used offshore entities in Belize, the British Virgin Islands and Panama, for apparent laundering proceeds, we believe that there is an extreme likelihood that the funds held by your Bank will be dissipated.

Please also advise as to which officer of the Bank will be acting as a contact on these issues,

Thank you for your consideration and cooperation.

Yours very truly,

Kanet Mcirmanov,
Director,
Turan Petroleum Inc.



Enclosure: Resolutions of the Stockholders' Meeting on February 19, 2009 and of the Board of Directors' Minutes, notarized Affidavit confirming authenticity.

cc: counsel

ss.
District of Columbia

AFFIDAVIT

The undersigned affiant, Kanet Mutalievich Meirmanov, born on February 2, 1954 in Kazakhstan, being duly sworn, hereby states and deposes:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the documents which are annexed.
2. The annexed documents represent true and correct copies of the Resolutions of the Special Meeting of the Stockholders, held on February 19, 2009 and the Minutes of the Board of Directors, held on February 19-24, 2009, i.e. 31 pages.
3. I am one of five new directors of the Board of Directors of Turan Petroleum Inc., a Nevada corporation, elected on February 19, 2009.
4. All prior alleged directors of Turan Petroleum, Inc. (not elected as such by stockholders) were removed for cause by the Special Meeting of the Stockholders on February 19, 2009, with the revocation of signatory rights on any accounts in the name of Turan Petroleum, Inc.
5. As a director and acting per the Decisions of the Board of Directors, I am duly authorized to submit to the banking institution Wells Fargo Bank, that holds the accounts of Turan Petroleum, Inc. these Resolutions and Minutes, with the request to freeze the accounts operated by the former operators of the corporation, pending the receivership.

Dated:

KANET MEIRMANOV

Director, Turan Petroleum, Inc.



William Karst
Notary Public, District of Columbia
My Commission Expires 1/31/2014

District of Columbia ss
Subscribed and Sworn to before me
this 27 day of February, 2009
Notary Public, D.C.
My commission expires 1/31/2014

P.4/4

To: 18653939396

6271 724 1729

SEP-06-2005 03:30 From: WELLS FARGO

EXHIBIT 4

1 Richard A. Solomon, SBN 82923
Stephen M. Spinella, SBN 144732
2 SOLOMON, GRINDLE, SILVERMAN & SPINELLA
A Professional Corporation
3 12651 High Bluff Drive, Suite 300
San Diego, California 92130
4 Tel: (858) 793-8500; Fax: (858) 793-8263

5 Attorneys for Third-Party Defendant and Counter-Claimant
WELLS FARGO BANK, N.A.
6

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **SOUTHERN DIVISION – SANTA ANA**

10 KAZENERCOM TOO, ET AL.,)

11 Plaintiffs,)

12 vs.)

13 TURAN PETROLEUM, INC., ET AL.,)

14 Defendants.)

15 TURAN PETROLEUM, INC,)

16 Defendant and)
17 Counterclaimant,)

18 vs.)

19 YERKIN BEKTAYEV and KANET
20 MEIRMANOV,)

21 Plaintiffs and)
22 Counterdefendants.)

23 TURAN PETROLEUM, INC.,)

24 Defendant and)
25 Third-Party Plaintiff,)

26 vs.)

27 WELLS FARGO, N.A., YERKIN
28 AKKUZOV, SABIRGAN DUSHALIEV,
IGOR MAXIMOV,)

Third-Party Defendants.)

Docket No. 08:09cv00059 JVS (MLGx)

Assigned for All Purposes to:
Hon. James V. Selna

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION BY THIRD-PARTY
DEFENDANT WELLS FARGO BANK,
N.A., FOR DISCHARGE OF
STAKEHOLDER, DISMISSAL OF
THIRD-PARTY COMPLAINT AGAINST
WELLS FARGO AND JUDGMENT FOR
ATTORNEY FEES

Date: April 27, 2009
Time: 1:30 p.m.
Dept: 10-C

1 WELLS FARGO BANK, N.A.,)
2 Third-Party Defendant)
3 and Counter-Claimant,)
4 vs.)
5)
6 TURAN PETROLEUM, INC., YERKIN)
7 BEKTAYEV, KANET MEIRMANOV,)
8 YERKIN AKKUZOV, SABIRGAN)
9 DUSHALIEV and IGOR MAXIMOV,)
10 Defendants, Third-Party)
11 Claimants and Counter-)
12 Defendants.)

12 I. INTRODUCTION

13 Third-Party Defendant and Counter-Claimant WELLS FARGO BANK, N.A. ("Wells Fargo")
14 moves the Court for discharge in the counter-claim in interpleader filed herein by Wells Fargo, on the
15 grounds that Wells Fargo is merely a stakeholder which has no interest in or knowledge of the issues
16 among the parties. Wells Fargo further requests dismissal with prejudice of the third-party claim filed
17 against Wells Fargo by Turan Petroleum, Inc. and a judgment for attorney fees and costs incurred by
18 Wells Fargo in this action to date.

19 II. FACTUAL BACKGROUND

20 This case involves a dispute among various individuals and defendant/counter-claimant Turan
21 Petroleum, Inc. ("Turan") over ownership and control of several business accounts on deposit with
22 Wells Fargo Bank in Costa Mesa, CA. In March 2009, Wells Fargo was notified of an alleged change
23 in control of Turan's Board of Directors, who requested that the accounts should be frozen pending a
24 court order of receivership. See Exhibit G to the Declaration of Askar Karabayev in Support of Turan's
25 Ex Parte Application dated March 6, 2009, a copy of which is provided herein as Exhibit 1 to Wells
26 Fargo's Request for Judicial Notice ("RJN"), filed and served herewith.

27 The parties were before the Court at an ex-parte OSC hearing on March 26, 2009, brought by
28 Turan demanding release of the subject accounts to Turan. In response to Turan's ex-parte application,

1 Wells Fargo filed a Memorandum of Points and Authorities and Declarations setting forth its position
2 as a mere stakeholder, a disinterested party which should bear no liability and have no involvement in
3 the dispute over the right to the subject accounts. See Response of Wells Fargo to Order to Show
4 Cause and Declarations of Sean M. Appenrodt ["Appenrodt Dec."] and Richard A. Solomon ["Solomon
5 Dec."] dated and filed March 20, 2009. Wells Fargo has answered the Third-Party Complaint filed
6 against it by Turan and also filed a Counter-claim in Interpleader. It has deposited all monies in the
7 subject accounts with the court. This motion seeks discharge from liability and recovery of fees
8 incurred by Wells Fargo in this action.

9 **III. ARGUMENT**

10 **A. Wells Fargo Has Been Subjected to Multiple Claims.**

11 A party seeking interpleader and discharge has the burden of showing that the interpleader is
12 justified in that the stakeholder may be exposed to multiple liability with respect to property it holds
13 because of conflicting claims. *Interfirst Bank Dallas, N.A. v. Purolater Courier Corp.*, 608 F.Supp.
14 351, 353 (N.D. Tex. 1985). Wells Fargo has made such a showing in its response to Turan's ex-parte
15 application referenced above. To reiterate Wells Fargo's position, on March 2, 2009, Wells Fargo
16 received a facsimile transmission labeled "urgent" from Kanet Meirmanov. See, RJN, Exhibit 2,
17 Appenrodt Dec., ¶ 11, and Exhibit B thereto. The letter, written on Turan letterhead, demands that
18 Wells Fargo freeze three accounts pending receivership and is signed by Mr. Meirmanov as the director
19 of Turan. The letter attaches a notarized affidavit which itself appends Resolutions of the Special
20 Meeting of the Stockholders [of Turan], held on February 19, 2009, etc. RJN, Exhibit 2, Appenrodt
21 Dec., ¶ 11, and Exhibit B thereto.

22 The letter and attachments speak for themselves. In effect, they alert Wells Fargo that the
23 previous directors and officers of Turan had been replaced as a result of the Special Meeting of the
24 Stockholders [of Turan], held on February 19, 2009, claiming also that the former directors and officers
25 of Turan had engaged in fraud, and demanding Wells Fargo freeze certain accounts. Wells Fargo froze
26 all Turan accounts that day. RJN, Exhibit 2, Appenrodt Dec., ¶¶ 12 and 13.

27 On March 4, 2009, others who claimed the authority to act for Turan became aware of the freeze
28 (e.g., Askar Karabayev, who submitted a declaration with respect to the OSC). On that day, counsel for

1 the moving party, Freeman, Freeman & Smiley (“FFS”) wrote to Wells Fargo and demanded that the
2 freeze on all Turan’s accounts be lifted. RJN, Exhibit 2, Appenrodt Dec., ¶ 14, and Exhibit C thereto.
3 In essence, the FFS letter contends that the attachments to the correspondence of March 2, 2009
4 (received from Mr. Meirmanov as the director of Turan) were invalid and that the shareholder meeting
5 referenced therein was likewise invalid. The FFS letter threatens to hold Wells Fargo responsible for
6 damages if it does not lift the freeze. RJN, Exhibit 2, Appenrodt Dec., ¶ 14, and Exhibit C thereto.

7 Since March 4, 2009, further demands have been made on Wells Fargo by both factions –
8 mainly via emails directed to its counsel. RJN, Exhibit 2, incorporating Solomon Dec. at ¶¶ 2 and 3.
9 Among other things, those emails advised of various filings in this action, including a motion to
10 disqualify FFS. In that motion to disqualify, the party sending the March 2, 2009, letter to Wells Fargo
11 maintains its position that the pre-existing board of directors of Turan had been validly dismissed and
12 others elected in its stead – just as represented to Wells Fargo in Turan’s letter of March 2, 2009. RJN,
13 Exhibit 2, Solomon Dec., ¶ 3 and Exh. E thereto. Additionally, in an email dated March 9, 2009,
14 counsel for the faction spearheaded by Meirmanov indicated that his clients oppose this instant OSC on
15 both “substantive and procedural grounds.” See, RJN, Exhibit 3, Declaration of R. Fisk, Exhibit A
16 thereto.

17 Accordingly, two factions, each purporting to act for Turan, have made demand on Wells Fargo
18 with regard to the account. FFS, purportedly representing Turan herein¹, has demanded that Wells
19 Fargo make a “judgment call” – to its peril if it should decide wrongly – as to who is entitled to the
20 monies on deposit. Self-evidently, Wells Fargo cannot do this. It is entitled to freeze the monies on
21 deposit, per the parties’ Business Account Agreement, or otherwise interplead if the various claimants
22 prove unable to resolve the dispute themselves (with or without court intervention).

23 **B. Wells Fargo is a Mere Stakeholder and Should Not Be Subject to Liability.**

24 The evidence provided to the Court at the ex-parte hearing makes it clear that there are
25 competing factions, each vying for control of Turan in some manner. Whether the claim of one party is
26

27 ¹Wells Fargo says “purportedly representing Turan” because of the motion to disqualify
28 FFS which was set for hearing in this Court on April 20, 2009, but was subsequently vacated by
the court at the March 26, 2009 hearing.

1 valid and the competing claim without merit is not for Wells Fargo to determine. To decide wrongly
2 would expose Wells Fargo to significant liability. For example, in the context of an interpleader, all
3 Wells Fargo need show is that it has a bona fide fear of several prospective claims. The relative merit
4 of the claims is not relevant and not for the stakeholder to decide. *New York Life Ins. Co. v. Lee*, 232
5 F.2d 811 (9th Cir. 1956); see also *Algemene Bank Nederland, N.V. v. Soysen Tarim Urunleri Dis*
6 *Ticaret Ve Sanayi, A.S.*, 748 F.Supp. 177, 180 (S.D.N.Y. 1990).

7 There is no question Wells Fargo is simply a stakeholder with no interest in the outcome of the
8 action and should be allowed to interplead the funds and obtain a discharge from further responsibility
9 or liability. In fact, at the ex-parte hearing, the court invited Wells Fargo to bring an interpleader action
10 – and the conflicting claims leveled against it – likely in recognition of the clear facts pointing to Wells’
11 Fargo’s non-involvement in the merits of the case. Wells Fargo has filed its Counter-Claim in
12 interpleader and now seeks discharge, dismissal of the Cross-Claim against it with prejudice and an
13 award of attorney fees and costs to compensate it for having to appear and defend in this action to date.

14 **C. Wells Fargo Has Deposited All Funds in Question with the Court.**

15 Federal Rule 22 permits interpleader in any action that meets the normal jurisdictional
16 requirements in federal court. There is also a statutory interpleader provided by 28 U.S.C. § 1335.
17 Deposit of the funds with the court is a jurisdictional prerequisite to maintaining the action. *Murphy v.*
18 *Travelers Ins. Co.*, 534 F.2d 1155, 1159 (5th Cir. 1976). However, Rule 22 does not require that the
19 money or property be deposited with the court. Nevertheless, Wells Fargo deposited all funds into the
20 Court on April 1, 2009. See, Declaration of Stephen M. Spinella, filed and served herewith, ¶ 4 and
21 Exhibit 1 thereto.

22 **D. Wells Fargo is Entitled to an Award of Attorney Fees and Costs.**

23 Courts have discretion to award attorney fees to a disinterested stakeholder in an interpleader
24 action under the court’s inherent equitable powers. *Abex Corp. v. Ski’s Enterprises, Inc.*, 748 F.2d 513,
25 516 (9th Cir. 1984). The rationale is that it would be inequitable to make the disinterested stakeholder
26 bear the expense of guarding against vexatious and multiple litigation. Moreover, the interpleader
27 action benefits the claimants by facilitating an early determination of ownership of the stake. *Schirmer*
28 *Stevedoring Co., Ltd. v. Seaboard Stevedoring Corp.*, 306 F.2d 188, 190 (9th Cir. 1962).

1 The factors to be considered in awarding attorney fees are, *inter alia*, the necessity of services,
2 the diligence in pursuing the remedy, the degree to which determination is – or, in this case is not – part
3 of the stakeholder’s ordinary cost of doing business. *Rutter Group Practice Guide: Federal Civil*
4 *Procedure Before Trial*, Chapter 10-B, § 10:206 and cases cited therein. In the case at bar, it is clear
5 Wells Fargo’s attorney fees have been necessitated by the real threat of multiple claims and potential
6 liability. Wells Fargo has responded immediately to the counter-claim filed against it and immediately
7 filed this motion within a week after the initial ex-parte hearing. Most importantly, Wells Fargo is
8 incapable of making a determination on its own as to who is the legitimate owner of the disputed funds
9 – this is not part of Wells Fargo’s normal course of business. Certainly, the equities favor
10 compensating Wells Fargo for the necessary legal fees incurred in responding to Turan’s Third-Party
11 claim and bringing this interpleader action and motion for discharge.

12 In addition, the accountholder agreement between Wells Fargo and Turan provides for attorney
13 fees. Upon the opening of a business account, Wells Fargo provides its depositors with a Business
14 Account Agreement that outlines the rights and obligations of the account holder and Wells Fargo.
15 RJN, Exhibit 2, Appenrodt Dec., ¶ 10. When Wells Fargo revises its business account agreements, the
16 revised version is mailed to the account holder at the address to which statements are sent. *Id.* The
17 most recent version of the Business Account Agreement provides in relevant part:

18 Adverse Claims

19 If any person or entity makes a claim against funds in your Account, or if
20 the Bank believes that conflict exists between or among the Authorized
21 Signers on you Account, or that there is a dispute over matters such as the
22 ownership of you Account or the authority to withdraw funds from your
23 Account, the Bank may, without any liability to you, take one or more of
24 the following actions:

- 25 * * *
- 26 • Freeze all or a part of the funds in your Account until the dispute is resolved to
27 the Bank’s satisfaction . . .
 - 28 • Pay the funds into an appropriate court.

The Bank may charge your Account for expenses (including attorney’s fees and expenses) and fees the Bank incurs.

27 RJN, Exhibit 2, Appenrodt Dec., ¶ 10, and Exhibit A thereto, emphasis added.

1 As shown in the Declaration of Stephen M. Spinella, filed concurrently herewith, Wells Fargo
2 has incurred \$10,501.00 in attorney fees to date herein.

3 **E. Wells Fargo Agrees to Have This Motion Heard on a Shortened-Notice Basis.**

4 The within motion is set for April 27, 2009, in accord with Local Rule 6-1, given the filing date
5 of this instant motion of April 3, 2009. However, at the ex-parte hearing of March 26, 2009, the Court
6 invited any hearing on Wells Fargo's motion for discharge to be heard on shortened time.

7 After this motion is filed and served, Wells Fargo will determine if any party intends to oppose
8 it. If not, Wells Fargo will appear on April 8, 2009 – the date scheduled for certain cross-motions for
9 summary judgment at which all potentially interested parties will also appear – in order to report to the
10 Court that there is no opposition to the within motion. In this manner, the Court may, in its discretion,
11 render a ruling hereon at its earliest convenience.² Alternatively, if any party wishes to oppose this
12 motion, Wells Fargo will seek the cooperation of all affected parties in order to set this motion for
13 hearing on shortened time (i.e, prior to April 24, 2009) and report any such agreement reached to the
14 Court on April 8, 2009.

15 **IV. CONCLUSION**

16 Based on the foregoing, Wells Fargo requests the court deem its interpleader action proper,
17 order that Wells Fargo be discharged from further liability to any or all of the parties named herein
18 under the allegations of the Complaint, Counter-Claim or Third-Party Claim, that the Third-Party Claim
19 be dismissed as to Wells Fargo with prejudice, and that judgment be entered in favor of Wells Fargo in
20 the amount of \$10,501.00, allowing said sum to be directed immediately to Wells Fargo out of the
21 corpus of all interpleaded funds.

22 Dated: April 3, 2009

SOLOMON, GRINDLE, SILVERMAN & SPINELLA, APC

23
24 By: \s\ S. Spinella
Stephen M. Spinella
25 Attorneys for Third-Party Defendant/Counter-Claimant,
26 Wells Fargo Bank, N.A.
27

28 ²Should Wells Fargo learn that no party opposes its motion herein prior to April 8, 2009,
it will report this to the Court the moment it confirms same in a notice of non-opposition.

BY FAX

2009 APR -3 PM 3:31

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SANTA ANA

BY: _____

dy

FILED

1 Richard A. Solomon, SBN 82923
2 Stephen M. Spinella, SBN 144732
3 SOLOMON, GRINDLE, SILVERMAN & SPINELLA
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8 Attorneys for Third-Party Defendant, Counter-Claimant
9 and Cross-Claimant, WELLS FARGO BANK, N.A.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION - SANTA ANA

13 KAZENERCOM TOO, ET AL.,

14 Plaintiffs,

15 vs.

16 TURAN PETROLEUM, INC., ET AL.,

17 Defendants.

18 TURAN PETROLEUM, INC.,

19 Defendant and
20 Counterclaimant,

21 vs.

22 YERKIN BEKTAYEV and KANET
23 MEIRMANOV,

24 Plaintiffs and
25 Counterdefendants.

26 TURAN PETROLEUM, INC.,

27 Defendant and
28 Third-Party Plaintiff,

vs.

WELLS FARGO, N.A., YERKIN
AKKUZOV, SABIRGAN DUSHALIEV,
IGOR MAXIMOV,

Third-Party Defendants.

Docket No. 08:09cv00059 JVS (MLGx)

Assigned for All Purposes to:
Hon. James V. Selna

**ANSWER OF THIRD-PARTY
DEFENDANT WELLS FARGO BANK,
N.A. TO THIRD-PARTY COMPLAINT
OF TURAN PETROLEUM, INC;**

**COUNTER-CLAIM OF WELLS
FARGO IN INTERPLEADER
(AGAINST TURAN, BEKTAYEV,
MERIMANOV, DUSHALIEV,
AKKUZOV AND MAXMOV)**

1 WELLS FARGO BANK, N.A.,

2 Third-Party Defendant
3 and Counter-Claimant,

4 vs.

5 TURAN PETROLEUM, INC., YERKIN
6 BEKTAYEV, KANET MEIRMANOV,
7 YERKIN AKKUZOV, SABIRGAN
8 DUSHALIEV and IGOR MAXIMOV,

9 Defendants, Third-Party
Claimants and Counter-
Defendants.

10
11
12 Third-Party Defendant, Counter-Claimant and Cross-Claimant WELLS FARGO BANK, N.A.
13 ("Wells Fargo") submits the following Answer to the Third-Party Complaint of Turan Petroleum, Inc.

14 1. Answering paragraph 1 of the Third-Party Complaint of Turan Petroleum, Inc. ("TPC"),
15 Wells Fargo is without sufficient knowledge or information to form a belief as to the truth of the
16 allegations contained in paragraph 1, and on that basis denies each and every allegation contained
17 therein.

18 2. Answering paragraph 2 of the TPC, Wells Fargo is without sufficient knowledge or
19 information to form a belief as to the truth of the allegations contained in paragraph 2, and on that basis
20 denies each and every allegation contained therein.

21 3. Answering paragraph 3 of the TPC, Wells Fargo admits that Turan is a corporation
22 organized under the laws of the State of Nevada, based on publicly-available information reasonably
23 accessible by Wells Fargo. Wells Fargo is without sufficient knowledge or information to form a belief
24 as to the truth of the remaining allegations contained in paragraph 3, and on that basis denies said
25 remaining allegations.

26 4. Answering paragraph 4 of the TPC, Wells Fargo is without sufficient knowledge or
27 information to form a belief as to the truth of the allegations contained in paragraph 4, and on that basis
28 denies each and every allegation contained therein.

1 5. Answering paragraph 5 of the TPC, Wells Fargo is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in paragraph 5, and on that basis
3 denies each and every allegation contained therein.

4 6. Answering paragraph 6 of the TPC, Wells Fargo admits that it is a federally chartered
5 national bank with its main office located in South Dakota. Wells Fargo denies the remaining
6 allegations of paragraph 6.

7 7. Answering paragraph 7 of the TPC, Wells Fargo is without sufficient knowledge or
8 information to form a belief as to the truth of the allegations contained in paragraph 7, and on that basis
9 denies each and every allegation contained therein.

10 8. Answering paragraph 8 of the TPC, Wells Fargo is without sufficient knowledge or
11 information to form a belief as to the truth of the allegations contained in paragraph 8, and on that basis
12 denies each and every allegation contained therein.

13 9. Answering paragraph 9 of the TPC, Wells Fargo is without sufficient knowledge or
14 information to form a belief as to the truth of the allegations contained in paragraph 9, and on that basis
15 denies each and every allegation contained therein.

16 10. Answering paragraph 10 of the TPC, Wells Fargo admits it is aware of a letter dated
17 February 4, 2009, entitled "Letter to Stockholders Regarding Special Meeting of Shareholders
18 Convened by Majority Shareholders in Turan Petroleum, Inc., a Nevada corporation, inasmuch as a
19 copy of said letter was directed to it on a date subsequent to February 4, 2009. Wells Fargo is without
20 sufficient knowledge or information to form a belief as to the truth of the remaining allegations
21 contained in paragraph 10, and on that basis denies said remaining allegations.

22 11. Answering paragraph 11 of the TPC, Wells Fargo is without sufficient knowledge or
23 information to form a belief as to the truth of the allegations contained in paragraph 11, and on that
24 basis denies each and every allegation contained therein.

25 12. Answering paragraph 12 of the TPC, Wells Fargo is without sufficient knowledge or
26 information to form a belief as to the truth of the allegations contained in paragraph 12, and on that
27 basis denies each and every allegation contained therein.

28 ///

1 13. Answering paragraph 13 of the TPC, Wells Fargo is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in paragraph 13, and on that
3 basis denies each and every allegation contained therein.

4 14. Answering paragraph 14 of the TPC, Wells Fargo is without sufficient knowledge or
5 information to form a belief as to the truth of the allegations contained in paragraph 14, and on that
6 basis denies each and every allegation contained therein.

7 15. Answering paragraph 15 of the TPC, Wells Fargo is without sufficient knowledge or
8 information to form a belief as to the truth of the allegations contained in paragraph 15, and on that
9 basis denies each and every allegation contained therein.

10 16. Answering paragraph 16 of the TPC, Wells Fargo is without sufficient knowledge or
11 information to form a belief as to the truth of the allegations contained in paragraph 16, and on that
12 basis denies each and every allegation contained therein.

13 17. Answering paragraph 17 of the TPC, Wells Fargo is without sufficient knowledge or
14 information to form a belief as to the truth of the allegations contained in paragraph 17, and on that
15 basis denies each and every allegation contained therein.

16 18. Answering paragraph 18 of the TPC, Wells Fargo is without sufficient knowledge or
17 information to form a belief as to the truth of the allegations contained in paragraph 18, and on that
18 basis denies each and every allegation contained therein.

19 19. Answering paragraph 19 of the TPC, Wells Fargo is without sufficient knowledge or
20 information to form a belief as to the truth of the allegations contained in paragraph 19, and on that
21 basis denies each and every allegation contained therein.

22 20. Answering paragraph 20 of the TPC, Wells Fargo is without sufficient knowledge or
23 information to form a belief as to the truth of the allegations contained in paragraph 20, and on that
24 basis denies each and every allegation contained therein.

25 21. Answering paragraph 21 of the TPC, Wells Fargo is without sufficient knowledge or
26 information to form a belief as to the truth of the allegations contained in paragraph 21, and on that
27 basis denies each and every allegation contained therein.

28 ///

1 22. Answering paragraph 22 of the TPC, Wells Fargo is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in paragraph 22, and on that
3 basis denies each and every allegation contained therein.

4 23. Answering paragraph 23 of the TPC, Wells Fargo is without sufficient knowledge or
5 information to form a belief as to the truth of the allegations contained in paragraph 23, and on that
6 basis denies each and every allegation contained therein.

7 24. Answering paragraph 24 of the TPC, Wells Fargo is without sufficient knowledge or
8 information to form a belief as to the truth of the allegations contained in paragraph 24, and on that
9 basis denies each and every allegation contained therein.

10 25. Answering paragraph 25 of the TPC, Wells Fargo is without sufficient knowledge or
11 information to form a belief as to the truth of the allegations contained in paragraph 25, and on that
12 basis denies each and every allegation contained therein.

13 26. Answering paragraph 26 of the TPC, Wells Fargo is without sufficient knowledge or
14 information to form a belief as to the truth of the allegations contained in paragraph 26, and on that
15 basis denies each and every allegation contained therein.

16 27. Answering paragraph 27 of the TPC, Wells Fargo is without sufficient knowledge or
17 information to form a belief as to the truth of the allegations contained in paragraph 27, and on that
18 basis denies each and every allegation contained therein.

19 28. Answering paragraph 28 of the TPC, Wells Fargo admits that it placed a freeze on the
20 bank accounts of Turan based, in part, on a letter it received from Meirmanov which was accompanied
21 by an Affidavit from Merimanov. Wells Fargo is without sufficient knowledge or information to form
22 a belief as to the truth of the remaining allegations contained in paragraph 28, and on that basis denies
23 said remaining allegations. Wells Fargo also specifically denies that the freeze placed on the bank
24 accounts of Turan was "unlawful" as alleged in paragraph 28.

25 29. Answering paragraph 29 of the TPC, Wells Fargo is without sufficient knowledge or
26 information to form a belief as to the truth of the allegations contained in paragraph 29, and on that
27 basis denies each and every allegation contained therein.

28 ///

1 30. Answering paragraph 30 of the TPC, Wells Fargo is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in paragraph 30, and on that
3 basis denies each and every allegation contained therein.

4 31. Answering paragraph 31 of the TPC, Wells Fargo admits that, on or about March 5,
5 2009, it provided to Sylvia Scott, Esq., who represented to Wells Fargo that she was the legal
6 representative of Turan, with a copy of the letter Wells Fargo received from Meirmanov. Wells Fargo
7 is without sufficient knowledge or information to form a belief as to the truth of the remaining
8 allegations contained in paragraph 31, and on that basis denies said remaining allegations. Wells Fargo
9 also specifically denies that it had not notified Turan of the freeze placed on the bank account.

10 32. Answering paragraph 32 of the TPC, Wells Fargo admits that it refused to lift the freeze
11 it placed on Turan's accounts. Wells Fargo also admits that representatives of Turan apprised Wells
12 Fargo that it was allegedly suffering damages as a result of the freeze. Wells Fargo is without sufficient
13 knowledge or information to form a belief as to the truth of the remaining allegations contained in
14 paragraph 32, and on that basis denies said remaining allegations. Wells Fargo also specifically denies
15 that the freeze placed on Turan's accounts was "wrongful" in nature as alleged by Turan, herein.

16 33. Answering paragraph 33 of the TPC, Wells Fargo is without sufficient knowledge or
17 information to form a belief as to the truth of the allegations contained in paragraph 33, and on that
18 basis denies each and every allegation contained therein.

19 34. Answering paragraph 34 of the TPC, Wells Fargo is without sufficient knowledge or
20 information to form a belief as to the truth of the allegations contained in paragraph 34, and on that
21 basis denies each and every allegation contained therein.

22 35. Answering paragraph 35 of the TPC, Wells Fargo is without sufficient knowledge or
23 information to form a belief as to the truth of the allegations contained in paragraph 35, and on that
24 basis denies each and every allegation contained therein.

25 36. Answering paragraph 36 of the TPC, Wells Fargo is without sufficient knowledge or
26 information to form a belief as to the truth of the allegations contained in paragraph 36, and on that
27 basis denies each and every allegation contained therein.

28 ///

1 37. Answering paragraph 37 of the TPC, Wells Fargo is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in paragraph 37, and on that
3 basis denies each and every allegation contained therein.

4 38. Answering paragraph 38 of the TPC, Wells Fargo is without sufficient knowledge or
5 information to form a belief as to the truth of the allegations contained in paragraph 38, and on that
6 basis denies each and every allegation contained therein.

7 39. Answering paragraph 39 of the TPC, Wells Fargo is without sufficient knowledge or
8 information to form a belief as to the truth of the allegations contained in paragraph 39, and on that
9 basis denies each and every allegation contained therein.

10 40. Answering paragraph 40 of the TPC, Wells Fargo incorporates by this references its
11 responses set forth in paragraphs 1 through 39 above.

12 41. Answering paragraph 41 of the TPC, Wells Fargo is without sufficient knowledge or
13 information to form a belief as to the truth of the allegations contained in paragraph 41, and on that
14 basis denies each and every allegation contained therein.

15 42. Answering paragraph 42 of the TPC, Wells Fargo admits that there were efforts made to
16 resolve certain issues embraced in the motion for emergency and injunctive relief filed herein by Third-
17 party Plaintiff. Wells Fargo is without sufficient knowledge or information to form a belief as to the
18 truth of the remaining allegations contained in paragraph 42, and on that basis denies said remaining
19 allegations.

20 43. Paragraph 43 of the TCP, and all sub-paragraphs thereof, is a request for relief which,
21 under the Federal Rules of Civil Procedure, Wells Fargo is not obligated to admit or deny.

22 44. Answering paragraph 44 of the TPC, Wells Fargo incorporates by this references its
23 responses set forth in paragraphs 1 through 43 above.

24 45. Answering paragraph 45 of the TPC, Wells Fargo is without sufficient knowledge or
25 information to form a belief as to the truth of the allegations contained in paragraph 45, and on that
26 basis denies each and every allegation contained therein.

27 46. Answering paragraph 46 of the TPC, Wells Fargo is without sufficient knowledge or
28 information to form a belief as to the truth of the allegations contained in paragraph 46, and on that

1 basis denies each and every allegation contained therein.

2 47. Answering paragraph 47 of the TPC, Wells Fargo is without sufficient knowledge or
3 information to form a belief as to the truth of the allegations contained in paragraph 47, and on that
4 basis denies each and every allegation contained therein.

5 48. Answering paragraph 48 of the TPC, Wells Fargo admits that, in part, in reliance on the
6 representations of parties holding themselves out as having authority to act for Turan, it froze the
7 subject accounts. Wells Fargo is without sufficient knowledge or information to form a belief as to the
8 truth of the remaining allegations contained in paragraph 48, and on that basis denies said remaining
9 allegations.

10 49. Answering paragraph 49 of the TPC, Wells Fargo is without sufficient knowledge or
11 information to form a belief as to the truth of the allegations contained in paragraph 49, and on that
12 basis denies each and every allegation contained therein.

13 50. Answering paragraph 50 of the TPC, Wells Fargo is without sufficient knowledge or
14 information to form a belief as to the truth of the allegations contained in paragraph 50, and on that
15 basis denies each and every allegation contained therein.

16 51. Answering paragraph 51 of the TPC, Wells Fargo is without sufficient knowledge or
17 information to form a belief as to the truth of the allegations contained in paragraph 51 and on that basis
18 denies each and every allegation contained therein.

19 52. Answering paragraph 52 of the TPC, Wells Fargo incorporates by this references its
20 responses set forth in paragraphs 1 through 51 above.

21 53. Answering paragraph 53 of the TPC, Wells Fargo is without sufficient knowledge or
22 information to form a belief as to the truth of the allegations contained in paragraph 53, and on that
23 basis denies each and every allegation contained therein.

24 54. Answering paragraph 54 of the TPC, Wells Fargo is without sufficient knowledge or
25 information to form a belief as to the truth of the allegations contained in paragraph 54, and on that
26 basis denies each and every allegation contained therein.

27 55. Answering paragraph 55 of the TPC, Wells Fargo is without sufficient knowledge or
28 information to form a belief as to the truth of the allegations contained in paragraph 55, and on that

1 basis denies each and every allegation contained therein.

2 56. Answering paragraph 56 of the TPC, Wells Fargo denies each and every allegation
3 contained therein to the extent it is alleged to be a "third-party Defendant" as alleged in this paragraph.
4

5 **AFFIRMATIVE DEFENSES**

6 Wells Fargo alleges the following matters as separate and affirmative defenses to each and every
7 cause of action in the TPC:

8 **FIRST AFFIRMATIVE DEFENSE**

9 **(Failure to State a Claim)**

10 Third-party Plaintiff has failed to plead facts sufficient to state a cause of action against Wells
11 Fargo.

12 **SECOND AFFIRMATIVE DEFENSE**

13 **(Own Acts)**

14 Wells Fargo is informed and believes and on that basis alleges that any damages suffered by
15 plaintiff were the result of Third-party Plaintiff's own acts and/or omissions.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Intervening Acts)**

18 Wells Fargo is informed and believes and on that basis alleges that any damages suffered by
19 Third-party Plaintiff are the result of an intervening and/or independent cause and not the result of any
20 act or omission by Wells Fargo.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **(Acts of Others)**

23 Wells Fargo is informed and believes and on that basis alleges that any damages suffered by
24 Third-party Plaintiff were caused either wholly or in part by persons or entities other than Wells Fargo,
25 and that the conduct of such other parties comparatively reduces the percentage of responsibility, if any,
26 to be borne by Wells Fargo.

27 ///

28 ///

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Privilege)**

3 Wells Fargo alleges that Third-party Plaintiff is precluded and estopped from maintaining any of
4 the causes of action pleaded against Wells Fargo herein inasmuch as Wells Fargo was permitted and
5 privileged to undertake all actions of which Third-party Plaintiff now complains.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Additional Affirmative Defenses)**

8 Wells Fargo currently has insufficient information available upon which to form a belief as to
9 whether it may have additional, as yet unstated, affirmative defenses available. Wells Fargo reserves
10 the right to assert additional affirmative defenses in the event discovery indicates they would be
11 appropriate.

12
13 **WHEREFORE, Wells Fargo prays:**

- 14 1. That Third-Party Plaintiff Turan Petroleum, Inc. take nothing by way of its Third-Party
15 Complaint against Wells Fargo and that judgment be entered in favor of Wells Fargo;
16 2. For attorney fees and costs of suit;
17 3. For such other and further relief as the Court deems just and proper.

18
19 Dated: March 30, 2009

SOLOMON, GRINDLE, SILVERMAN & SPINELLA, APC

20
21 By: 

22 Stephen M. Spinella
23 Attorneys for Third-Party Defendant Wells Fargo Bank,
24 N.A.
25
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27
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COUNTER-CLAIM OF WELLS FARGO

Counter-Claimant Wells Fargo Bank, N.A. ("Wells Fargo") files the following Counter-Claim against Defendant, Third-Party Claimant and Counter-Defendant, TURAN PETROLEUM, INC. ("Turan"), and Counter-Defendants, YERKIN BEKTAYEV ("Bektayev"), KANET MEIRMANOV ("Meirmanov"), YERKIN AKKUZOV ("Akkuzov"), SABIRGAN DUSHALIEV ("Dushaliev") and IGOR MAXIMOV ("Maximov"), and alleges as follows:

1. This Court has jurisdiction over this Counter-Claim pursuant to Federal Rules of Civil Procedure, Rule 22 and 28 U.S.C. § 1335. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391.

2. Third-party Defendant and Counter-Claimant, Wells Fargo Bank, N.A., is a federally-chartered national bank with its main office located in South Dakota.

3. Wells Fargo is informed and believes that Turan is a corporation organized under the laws of the state of Nevada, with its principal place of business in Orange County, California.

4. Wells Fargo is informed and believes that Bektayev is a citizen of the Republic of Kazakhstan who, on information and belief, resides in the Republic of Kazakhstan.

5. Wells Fargo is informed and believes that Meirmanov is a citizen of the Republic of Kazakhstan who, on information and belief, resides in the Republic of Kazakhstan.

6. Wells Fargo is informed and believes that Akkuzov is a citizen of the Republic of Kazakhstan who, on information and belief, resides in the Republic of Kazakhstan.

7. Wells Fargo is informed and believes that Dushaliev is a citizen of the Republic of Kazakhstan who, on information and belief, resides in the Republic of Kazakhstan.

8. Wells Fargo is informed and believes that Maximov is a citizen of the Republic of Kazakhstan who, on information and belief, resides in the Republic of Kazakhstan.

9. Turan maintains several business accounts with Wells Fargo at its Costa Mesa banking center. Those accounts bear the following account numbers: 573-8215283, 313-8162700 and 265-3846101 ("the Accounts").

///

1 10. Upon the opening of a business account, Wells Fargo provides its depositors with a
2 Business Account Agreement that outlines the rights and obligations of the account holder and Wells
3 Fargo. When Wells Fargo revises its business account agreements, the revised version is mailed to the
4 account holder at the address to which statements are sent.

5 11. The most recent version of the Business Account Agreement provides in relevant part:

6 Adverse Claims

7 If any person or entity makes a claim against funds in your Account, or if
8 the Bank believes that a conflict exists between or among the Authorized
9 Signers on your Account, or that there is a dispute over matters such as
10 the ownership of your Account or the authority to withdraw funds from
11 your Account, the Bank may, without any liability to you, take one or
12 more of the following actions:

13 * * *

- 14 • Freeze all or a part of the funds in your Account until the dispute is resolved to
15 the Bank's satisfaction . . .
- 16 • Pay the funds into an appropriate court.

17 The Bank may charge your Account for expenses (including attorney's fees and
18 expenses) and fees the Bank incurs.

19 12. On March 2, 2009, Wells Fargo received a facsimile transmission labeled "urgent" from
20 Merimanov. The letter, written on Turan letterhead, demands that Wells Fargo freeze the Accounts
21 pending receivership and is signed by Merimanov as the director of Turan. The letter attaches a
22 notarized affidavit which itself appends Resolutions of the Special Meeting of the Stockholders [of
23 Turan], held on February 19, 2009.

24 13. Said letter and attachments of March 2, 2009, represent that pursuant to a Special
25 Meeting of the Stockholders of Turan, held on February 19, 2009, Meirmanov, Bektayev, Dushaliev,
26 Maximov and Akkuzov became the newly-elected Board of Directors, authorized to act on behalf of
27 Turan. Said letter and attachments further represents that all individuals holding themselves out
28 previously as directors and/or officers of Turan had been replaced by the aforementioned individuals
constituting the newly-elected Board of Directors.

 14. In accord with the Business Account Agreement, Wells Fargo froze the Accounts on
March 2, 2009.

1 15. On March 4, 2009, legal representatives of the Turan board of directors who were
2 allegedly relieved of their duties by the newly-elected board of directors claimed that the newly-elected
3 board of directors had no authority to act for Turan, that the election by which said newly-elected board
4 of directors was elected was invalid, and that these competing factions were involved in active
5 litigation.

6 16. Accordingly, Wells Fargo has been subjected to competing demands by competing
7 parties, each of which claims to have the sole authority to act for Turan and control the Accounts. On
8 the one hand, the individuals named herein; i.e., Meirmanov, Bektayev, Dushaliev, Maximov and
9 Akkuzov, claim the authority to act for Turan as its newly-elected board of directors and have
10 demanded that Wells Fargo freeze the Accounts. On the other hand, representatives of the board of
11 directors of Turan who were allegedly relieved of their duties by the aforementioned newly-elected
12 board of directors claim that said newly-elected board of directors has no authority to act for Turan, that
13 the election by which said newly-elected board of directors was elected was invalid, and have
14 demanded that Wells Fargo lift the freeze placed on the Accounts.

15 17. Wells Fargo is a mere stakeholder and has no interest in the Accounts.

16 18. Wells Fargo has a bona fide fear that it may be subjected to multiple liability, is unable
17 to determine the validity of the conflicting demands made on the Accounts, and cannot safely determine
18 who has the authority to act for Turan with respect to the Accounts without Court intervention herein.

19 19. Wells Fargo has incurred costs and reasonable attorney fees in connection with these
20 proceedings and may incur additional costs and attorney fees hereafter.

21 20. Wells Fargo interpleads into court herewith, via deposit with the Clerk of the Court, the
22 sum of \$1,499,942.42, representing all sums on deposit in the Accounts.

23
24 WHEREFORE, Wells Fargo prays judgment as follows:

25 (1) that counter-defendants herein be ordered to interplead and litigate their claims to the
26 money described in this Cross-Complaint in Interpleader;

27 (2) that Wells Fargo be discharged from liability to each of said counter-defendants, and any
28 other party with notice of this Counter-Claim, with respect to all monies interpleaded herein; and

1 (3) that Wells Fargo be awarded costs and reasonable attorney fees to be paid to it from the
2 funds deposited with the Clerk of the Court; and

3 (4) for such other and further relief as the Court deems just.
4

5 Dated: March 30, 2009

SOLOMON, GRINDLE, SILVERMAN & SPINELLA, APC

6

7

By: 

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Stephen M. Spinella
Attorneys for Third-Party Defendant/Counter-Claimant,
Wells Fargo Bank, N.A.

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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 620 Newport Center Drive, Suite 1100, Newport Beach, CA 92660.

On November 16, 2012, I served the foregoing document(s) NOTICE OF MOTION AND MOTION: (1) FOR ORDER RELEASING FUNDS TO SATISFY JUDGMENT/LIEN; OR IN THE ALTERNATIVE, (2) FOR ORDER GRANTING LIEN ON ANY CAUSE OF ACTION, RIGHT TO RELIEF OR JUDGMENT THAT TURAN PETROLEUM MAY HAVE; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATIONS OF ANATOLY VANETIK AND RICK AUGUSTINI IN SUPPORT THEREOF by placing a true copy thereof enclosed in a sealed envelope addressed as follows:


John M. Hamilton, Esq. JOHN M. HAMILTON LAW OFFICES 5757 West Century Boulevard, Suite 700 Los Angeles, CA 90045	Paul A. Hoffman, Esq. GREENWALD & HOFFMAN 1851 E First Street, Suite 860 Santa Ana, CA 92705-4039
John T. Schreiber, Esq. LAW OFFICES OF JOHN T SCHREIBER 1255 Treat Boulevard, Suite 300 Walnut Creek, CA 94597	Leonard J. Suchanek, Esq. LEONARD J SUCHANEK & ASSOCIATES 1025 Connecticut Avenue Suite 1000 NW Washington, DC 20036
Sylvia M. Scott, Esq. Russell R. Fisk, Esq. FREEMAN FREEMAN AND SMILEY LLP 3415 Sepulveda Boulevard, PH-Suite 1200 Los Angeles, CA 90034-6060	Richard A. Solomon, Esq. Stephen M. Spinella, Esq. SOLOMON GRINDLE SILVERMAN & SPINELLA 12651 High Bluff Drive, Suite 300 San Diego, CA 92130
Alex Striganov 80 Gingerwood Irvine, CA 92603	

I mailed such envelope(s) by depositing them in the United States mail at Newport Beach, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 16, 2012 at Newport Beach, California.

s/Michelle Broughman

A handwritten signature in black ink, appearing to read 'Michelle Broughman', written over a horizontal line.

Michelle Broughman